

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission, on	) Application No. NG-0038
its own motion, to consider require-	)
ments for implementation of LB 1249.	) ORDER ADOPTING INTERIM
	) POLICY AND CLOSING DOCKET
	)
	) Entered: October 3, 2006

BY THE COMMISSION:

On June 13, 2006, the Nebraska Public Service Commission opened the above-captioned docket on its own motion to consider requirements for implementation of LB 1249.

On April 13, 2006, Nebraska Legislative Bill 1249 was signed by the Governor and became effective on July 14, 2006. The bill amends the natural gas pipeline dispute statutes, 57-1301 et seq., by requiring the affected party to file notice of a natural gas main extension prior to undertaking or pursuing such extension, and setting up a process for protesting proposed extensions.

Prior to promulgating proposed rules and regulations, the Commission sought comment from interested parties on the implementation of LB 1249, and held a workshop on June 29, 2006. Subsequently, staff informally circulated proposed rules for further comment.

Based on the comments received during the workshop and the subsequent written comments, the Commission finds that the proposed rules implementing LB 1249, attached hereto as Appendix A, should be adopted as an interim policy to guide parties in the filing and processing of proposed natural gas main and pipeline extension pending completion of the formal rule and regulation process.

The Commission further finds that this docket should be closed and incorporated into Rule and Regulation No. 167 so that final rules and regulations may be adopted.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the proposed rules implementing LB 1249, attached hereto as Appendix A, shall be adopted as an interim policy to guide parties in the filing and processing of proposed natural gas main and pipeline extension pending completion of the formal rule and regulation process.

IT IS FURTHER ORDERED that the present docket is closed and incorporated into Rule and Regulation No. 167 so that final rules and regulations may be adopted.

MADE AND ENTERED at Lincoln, Nebraska, this 3rd day of October, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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003   DISPUTES BETWEEN INVESTOR-OWNED NATURAL GAS UTILITIES AND  
METROPOLITAN UTILITIES DISTRICTS:

003.01   Commission Jurisdiction:   If an investor owned natural gas utility disagrees with a metropolitan utilities district or a metropolitan utilities district disagrees with an investor owned utility over a determination that a proposed extension or enlargement of a natural gas service area is in the public interest, the matter may be submitted to the Commission for hearing and determination. No jurisdictional utility or metropolitan utilities district proposing to extend or enlarge its natural gas service area or extend or enlarge its natural gas mains or natural gas services shall undertake or pursue such extension or enlargement until the proposal has been submitted to the Commission for its determination that the proposed extension or enlargement is in the public interest. Any enlargement or extension by a metropolitan utilities district within the boundaries of a city of the metropolitan class involving the exercise of the power of eminent domain pursuant to Neb. Rev. Stat. § 14-2116(2) shall, by reason of such exercise, be conclusively determined to be in the public interest.

003.01A   Filing and Contents of Proposal:   Any proposal for extension or enlargement shall be filed with the Commission, and the Commission shall promptly make such application public in such manner as the Commission deems appropriate. Proposals for multiple extensions or enlargements may be filed in a single document at the discretion of the utility.

003.01A1   The proposal shall contain sufficient information so as to provide reasonable notice to any interested party of the location and nature of the proposed extension or enlargement. Such information shall contain, but not necessarily be limited to:

003.01A1a   A description of the location of the extension or enlargement including any cross streets and a statement as to whether the proposed extensions are entirely or partially within a particular zoning jurisdiction;

003.01A1b   The municipality and subdivision or development, if any, proposed to be

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served by the proposed extension or enlargement;

003.01A1c The plat and/or map for the proposed service area depicting the location of known mains of all natural gas utility service within a one (1) mile radius of the area to be served;

003.01A1d A description of the nature of the extension or enlargement including size and length of the main; and

003.01A2e The anticipated date the jurisdictional utility or metropolitan utilities district intends to undertake or pursue such extension or enlargement.

003.01B The proposal shall be served on any jurisdictional utility or metropolitan utilities district with natural gas infrastructure in the area of the proposed extension or enlargement.

003.01C The Commission shall make such proposals public by posting them on the Commission website. Such proposals shall be deemed to have been made public three (3) days after the date of filing.

~~003.02 Location of Hearing: A hearing commenced pursuant to this section shall be held in the county where such extension or enlargement of the natural gas service area is proposed.~~

003.02 Protests: If no person or entity has filed with the Commission a protest alleging that the proposed extension or enlargement is not in the public interest within fifteen (15) business days after the date upon which the application was made public, the enlargement or extension shall be conclusively presumed to be in the public interest and the jurisdictional utility or metropolitan utilities district may proceed with the extension or enlargement without further Commission action. If a person or entity files with the Commission a protest, within five (5) business days of the filing of the protest, the jurisdictional utility or metropolitan utilities district proposing the extension or enlargement shall file with the Commission and serve on any party filing a protest a

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description as to how the proposed extension or enlargement satisfies the criteria set forth in Rule 003.

003.03 Subpoena and Other Powers: The Commission staff may administer oaths, compel the attendance of witnesses, examine any of the books, papers, documents and records of any investor-owned natural gas utility or metropolitan utilities district involved in a determination pursuant to this section. The Commission may have such examination made by any person that the Commission may employ for that purpose. Such person may also compel the production of such books, papers, documents or records or examine under oath or otherwise any officer, director, agent, or employee of any such party to the determination.

003.04 Hearing: Upon application by an investor-owned natural gas utility or a metropolitan utilities district seeking a determination pursuant to this section, the Commission shall set a hearing date not later than ninety (90) days from the date of application except for good cause shown. In no event shall a hearing be set later than six (6) months from the date of application.

003.04A A hearing commenced pursuant to this section shall be held in the county where such extension or enlargement of the natural gas service area is proposed.

003.04AB Ratepayers of the investor-owned utility or the metropolitan utilities district shall have the right to appear and present testimony before the Commission and shall have such testimony considered by the Commission in arriving at its determination.

003.05 Fees: ~~For each application filed with the Commission pursuant to this section, the applicant shall be charged a filing fee of the maximum rate allowed by law which shall be payable at the time of application. There shall also be charged to applicants a hearing fee of fifty dollars (\$50.00) for each half day of hearings if the application for a determination necessitates such a hearing.~~

003.06 Procedure: Except as herein provided, all proceedings will be governed by the Rules of Commission Procedure as codified by state law and Nebraska Administrative Code, Title 291, Chapter 1.

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003.07 Determining Considerations: In determining whether a proposed expansion or enlargement is in the public interest, the Commission shall consider:

003.07A The economic feasibility of the extension or enlargement;

003.07B The impact the enlargement will have on the existing and future natural gas ratepayers of the metropolitan utilities district or the investor-owned natural gas utility;

003.07C Whether the extension or enlargement contributes to the orderly development of natural gas utility infrastructure;

003.07D Whether the extension or enlargement will result in duplicative or redundant natural gas utility infrastructure; and,

003.07E Whether the extension or enlargement is applied in a non-discriminatory manner.

003.07F Any books, records, vouchers, papers, contracts, designs, or other data not made available to the parties shall not be considered by the Commission in making its determination of whether an extension or enlargement of a service area is in the public interest.

003.08 Rebuttable Presumptions: In determining whether an extension or enlargement of a natural gas service area, natural gas mains, or natural gas services is in the public interest, the following rebuttable pre-sumptions shall govern:

003.08A Any enlargement or extension by a metropolitan utilities district within a city of the metropolitan class or its extraterritorial zoning jurisdiction is in the public interest;

003.08B Any enlargement or extension by an investor-owned natural gas utility within a city of the primary, first, or second class or village in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest; and,

003.08C Any enlargement or extension by a metropolitan utilities district within its statutory boundary or within a

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city of the first or second class or village in which it serves natural gas on a franchise basis or its extraterritorial zoning jurisdiction is in the public interest.

003.09 Commission Orders: Except for good cause shown, the Commission shall enter an order within thirty (30) days after completion of the hearing or after submission of affidavits in non-hearing proceedings.

003.09A All Commission orders shall become operative ten (10) days after the date of mailing a copy of the order to the parties of record unless the Commission prescribes a different effective date.

003.10 Appeals: Any party to a proceeding may appeal to the ~~Court of Appeals~~ District Court to reverse, vacate or modify the order of the Commission. ~~The order of the Commission shall be held in abeyance pending such appeal except as may otherwise be provided for by law.~~

003.11 Enforcement: The Commission is empowered to enforce its order as provided for by law.